

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 82 OF 1994
IN
WRIT PETITION NO. 1351 OF 1989

1. Mahadev Shamrao Vaghamare & Ors. .. Petitioners.

V/s.

1. Vijay Narayan Patki & Ors. .. Respondents.

Mr.S.G.Kudle for the Petitioners.

Mr.T.D.Deshmukh for the Respondent Nos. 2 to 5.

Mrs.Ahuja Deepa for the Respondent No.7.

CORAM : S. A. BOBDE, J.

DATED : 14th AUGUST, 2007.

P.C. :-

. According to the petitioners there is a breach of the order of this court dated 10th April, 1991 by which the respondent society and its members were prevented from commencing construction before receiving final sanction in respect of the lay out plan in question. The learned counsel for the respondents states that the said order was in fact obtained at the instance of the respondents and it did not cover them since they were the petitioners in the petition. There is no merit in this petition. The order is clearly intended to prohibit the society and its members from

commencing construction. Admittedly, the respondents are members of the society and are equally bound by the order. However, according to the respondents they have not commenced construction before the plan was sanctioned on 30th September, 1994.

2. Mr. Kudle, the learned counsel for the petitioners, however, referred to the notice dated 01.02.1994 issued by the respondent corporation, alleging that the respondents have carried out the illegal construction. However, from the notice it is clear that before the respondents were to carry on a new construction or whether they were to carry on repairs which were considered to be illegal by the corporation; Mr.Deshmukh, the learned counsel for the respondents, referred to the receipt at Exh.'A', which suggest that the respondents had applied to the Solapur Municipal Corporation for permission to carry out repairs. Thus there is evidence that though the respondents carried out construction, it may not have amounted to "construction" as contemplated in the order of the court and may have been in the nature of carrying out repairs. The benefit of doubt must go to the respondents.

3. The petition is hereby dismissed. Rule discharged.

(S.A.BOBDE, J.)